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SENATE NATURAL RESOURCES
COMMITTEE
HEARING NO. 6
DATE 2-14-07
SUBJECT SB 425

Testimony
Glenn Oppel, Government Affairs Director
Montana Association of REALTORS®

Senate Natural Resources Committee
2-14-07 Hearing: Senate Bill 425

MAR represents nearly 5,000 real estate brokers, property managers, salespersons, and affiliates throughout Montana and is the business advocate for Montana real estate professionals, representing practitioners active in all phases of real estate brokerage, management, development, and appraisal.

MAR's members are concerned with ensuring that Montana can keep pace with the demands of a growing economy, including providing housing for the workers who drive that growing economy. Towards that end, MAR supports legislation that will provide water and other necessary resources for new development while at the same time protecting existing water rights holders. Consequently, MAR supports Senate Bill 425 because it recognizes the proper balance between the protection of existing water rights holders and new water development.

As statute already recognizes in Mont. Code Ann. §85-2-401(1), priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, unless such change actually results in adverse effect on senior appropriators. Senate Bill 425 offers further clarity in the change authorization or permitting process by setting out the standards for determining whether a new or changed appropriation will have an adverse effect and, in particular, for determining whether a new or changed appropriation so affects the condition of water occurrence as to prevent an objector from reasonably exercising his or her senior water right.

The Montana Department of Natural Resources and Conservation's ("DNRC") interpretation and application of the Water Use Act can, at times, be a moving target because of a lack of precision and clarity, thereby significantly increasing the costs of water development and new housing construction. Senate Bill 425 presents a much needed modicum of precision for both DNRC and water users who seek to change or develop their water rights.

Senate Bill 425 confirms the proper standard for determination and measurement of adverse effect and the correct allocation of burden between existing water rights holders and new appropriators in plain and clear language, allowing for proper application by DNRC when evaluating new water development or changes in existing water use. MAR supports Senate Bill 425 as a sound equilibrium between protection of existing water uses and facilitation of new water development. Therefore, MAR respectfully requests that this committee recommend a "do not pass" on Senate Bill 425. Thank you, and I will be available for any questions.